

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BRIAN MARTINEZ,

Petitioner,

- v -

9:06-CV-0887
(DNH)(RFT)

SUSAN O'CONNELL, Superintendent,

Respondent.

APPEARANCES:

OF COUNSEL:

BRIAN MARTINEZ

Petitioner, *Pro se*

99-B-0537

Oneida Correctional Facility

6100 School Road

Rome, New York 13340

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New York, New York 10271

LISA FLEISCHMANN, ESQ.
Assistant Attorney General

RANDOLPH F. TREECE, U.S. MAGISTRATE JUDGE

ORDER

Presently before this Court for consideration is an Amended Petition filed by Brian Martinez in accordance with this Court's January 22, 2007 Order. Dkt. No. 6, Order, dated Jan. 22, 2007; Dkt. No. 16, Am. Pet.

Petitioner filed this action on July 20, 2006. Dkt. No. 1, Pet. After the Petition was served, Respondent filed a Motion for a More Definite Statement, Dkt. No. 3, which was granted on January 22, 2007, Dkt. No. 6. In the January Order, the Court set forth the requirements of Rule 2 of the Rules Governing *Habeas Corpus* Proceedings and explained that

Petitioner has set forth the procedural history of his case in considerable detail, including the claims presented to the state courts. However, Petitioner does not set forth a statement of the grounds he seeks this Court to adjudicate, nor the facts in support of each such ground.

Dkt. No. 6 at p. 2.

Petitioner was also advised, in detail, of the information that must be propounded if he seeks to assert a claim of “actual innocence.” *Id.*

A review of the Amended Petition reveals that Petitioner has once again set forth the entire history of his case, including every factual and legal argument raised in each proceeding he has been a party to, and the reason he believes that each Court was in error. The document filed as the Amended Petition is more of a Memorandum of Law than a Petition. Most significant is the fact that Petitioner never states what legal claims he seeks this Court to adjudicate.

Accordingly, Petitioner will be directed to file a written statement simply listing the grounds he seeks this Court to adjudicate, without argument as to any of the grounds.¹

WHEREFORE, it is hereby

ORDERED, that Petitioner shall file with the Court within **thirty (30) days** from the filing date of this Order, a written statement listing the legal grounds he seeks this Court to adjudicate; and it is further

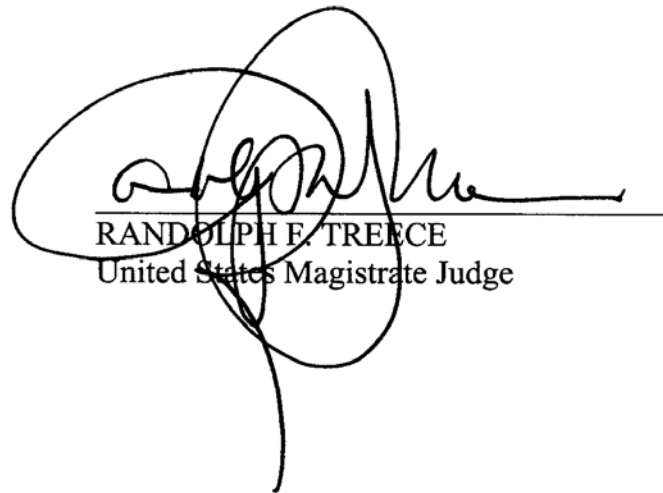
ORDERED, that upon Petitioner’s compliance with this Order, this matter be returned to the Court for further review and Order; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

¹ If Petitioner complies with this Order and files a listing of the grounds he seeks to raise herein, such a statement in combination with the Amended Petition should provide the Respondent with sufficient notice of the claims Petitioner seeks to put before this Court.

IT IS SO ORDERED.

Date: August 16, 2007
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge